

DEPARTMENT OF THE NAVY

Washington

March 7, 1941

Sirs:

By letter of December 19, 1940, No. EN12/General (Resp. 131), to the Supervisor of Shipbuilding, USN, the Contractor refers to Article 3(d) of the General Provisions forming part of contracts executed by him since July 1, 1940, for the construction of Naval vessels, which provides under the caption "Special Plant Protection" as follows:

" (d) In addition to the ordinary precautions heretofore adopted by the contractor for the guarding and protection of its plant and work, the contractor shall provide such additional watchmen and devices for the protection of its plant and property and the work in process for the Department against espionage, acts of war, and acts of enemy aliens as may be required by the Secretary of the Navy. The additional cost thereof shall be treated as a change under this contract."

The Contractor states that he has complied with the foregoing provision of the contracts which has resulted in increased cost of facilities and also increased plant operating costs, and that the operating expense will be current and will continue during the construction period of each vessel. He requests that a general change for all contracts covering the increased cost involved for special plant protection be authorized, and that current operating costs, as submitted by him, be adjudicated by the Change Board each month, and that payments, as earned, be made monthly by the Navy Department.

The procedure proposed by the Contractor is, in general, satisfactory to the Navy Department. In order that the Bureau of Ships may issue the proper administrative instructions in the matter to all Supervisors of Shipbuilding, the Secretary of the Navy hereby modifies Article 3(d),

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quoted above, of Contracts NOD-1430, NOD-1432, NOD-1433, NOD-1497, NOD-1500, NOD-1503, NOD-1642, and NOD-1732, to read as follows:

" (d) In addition to the ordinary precautions heretofore adopted by the Contractor for the guarding and protection of its plant and work, the Contractor shall provide, as may be required by the Secretary of the Navy, or the Chief of the Bureau of Ships as his duly authorized representative, such additional watchmen and devices for the protection of its plant and property and the work in process for the Department against espionage, acts of war, and acts of enemy aliens. The additional cost thereof shall be treated as a change under this contract."

It is requested that the receipt of this letter be acknowledged.

Respectfully,

/s/ James Forrestal

Acting Secretary of the Navy.

Federal Shipbuilding and  
Dry Dock Company,  
Kearny, New Jersey.

CC: BuShips, SupShip., Kearny, N.J., BuS&A, CompBD (2),  
G.A.O. (Audit Div.)

### Materials and Methods

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### Suspension of work.

vessels until final disposition thereof. The Department shall also pay to the contractor 8.7 percent of such additional expenses. The Secretary of the Navy will grant an extension in the contract construction period equal to the delay caused by such suspension, which increase shall not in any case be less than the period of such suspension.

Board.

(b) The amount which the Department shall pay to the contractor will be determined by the Compensation Board. As soon as practicable after such suspension is ordered, the Board shall determine the amount to be allowed the contractor as monthly payments, and after such suspension is terminated the Board shall determine the amount in addition to the monthly payments which shall be payable to it on account of such suspension. The amounts so determined, when approved by the Secretary of the Navy (after hearings, if desired by the contractor), shall be the amounts that shall be paid to the contractor in full settlement of the costs of such suspension.

Termination.

10. (a) In case of the failure or omission of the contractor, at any stage of the work prior to its completion, from any cause or causes, to go forward with the work and make satisfactory progress toward its completion within the period prescribed, the Secretary of the Navy for just cause after due hearing may, by written notice to the contractor, terminate its right to proceed with the work. In case the contractor's right to proceed is so terminated, the Department may, when the delays, in the judgment of the Secretary of the Navy, are retarding progress of work to such an extent as to jeopardize completion and delivery of the vessel/vessels within the prescribed time, immediately enter the works and premises of the contractor and take possession of the vessel/vessels and the materials for its/their construction. The Secretary of the Navy thereupon shall cause to be taken and filed a full and complete statement and inventory of all work done or begun in, upon, or about the vessel/vessels and of all materials on hand or on order applicable thereto, or intended therefor, by a board consisting of not less than five persons qualified by knowledge and experience for the discharge of their duties, to be appointed by the Secretary of the Navy, which board shall proceed without unnecessary delay to examine such work and materials, and upon such examination the contractor may attend by representative and, if it so desires, by counsel, and submit evidence.

Completion in event of termination—  
surrender of plant.

(b) Upon receipt by the Department of the statement and inventory prepared by said board as aforesaid and approved by the Secretary of the Navy, the Department may proceed with the completion of the vessel/vessels in accordance with the contract, including changes therein that may be authorized in accordance with the provisions thereof either at the plant of the contractor or elsewhere, by contract or otherwise, in its discretion, using for that purpose all suitable materials, equipment, and appliances on hand or on order and included in the inventory aforesaid, and may remove the vessel/vessels and materials to such other place or places as may be requisite to the exercise of such discretion. The contractor on receiving notice of the intention of the Department to proceed with the completion of the work will surrender the vessel/vessels and all such materials, equipment, and appliances, together with the use, so far as required, of the plant of the contractor, and all machinery, tools, and appliances appertaining thereto and theretofore used, or necessarily to be used, in and about the finishing of the work. The completing of the vessel/vessels shall be carried on without unnecessary delay, and shall be at the expense of the contractor, who shall be chargeable with any increase in the cost of materials or labor incurred by reason of its failure to perform this contract, and with the cost of correcting any improper or defective work discovered in such parts of the vessel/vessels as may have been constructed by the contractor, or of replacing any defective material furnished by it except as hereinafter otherwise provided.

(c) If, in the judgment of the Secretary of the Navy, such failure or omission shall have been due to fire or to causes beyond the control and without the fault or negligence of the contractor, including but not restricted to acts of God or of the public enemy, acts of the Government, flood, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors due to such causes, then the contractor, without restricting the right of the Secretary of the Navy under this article, shall be entitled to payment for all work done to the date of the receipt of notice of termination in the same manner and to the same extent as if the contract had been cancelled in accordance with the provisions of Article 11 hereof. If, however, in the judgment of the Secretary of the Navy, such failure or omission shall have been due to other causes, then in making the final settlement of the liability of the contractor an account shall be stated substantially as follows:

As stated

The contractor and his works shall be charged:

(1) With all payments made to it under the contract less such payments, if any, as may have been refunded.

(2) With the cost of material and labor and all other expenses incurred by or on behalf of the Department, in finishing the work in accordance with the contract and changes duly authorized at the time the contractor's right to proceed with the work was terminated.

(d) If the total amount thus charged against the contractor shall exceed the contract price of the vessel/vessels, plus the net extras, if any, at the time of the termination of such contract, the contractor shall pay such excess, on demand, and the payment thereof shall be accepted by the Department in full discharge of all its claims under this contract. Should said amount, however, be less than said contract price plus the net extras, if any, at the time of said termination, the deficiency shall be paid as and accepted by the contractor in full discharge of all its claims under this contract. *Provided, however,* That said deficiency shall not exceed the contract less previous payments made to it.

(e) If, in case the contract is cancelled by the Secretary of the Navy, for any cause other than that stated in Article 10, the contractor, as soon as practicable after the receipt by it of written notice of the cancellation hereof, shall stop all work in connection with the contract, and the vessel/vessels, except such work as the Secretary of the Navy shall direct the contractor to continue. If this contract is thus cancelled, the contractor shall be entitled to payment with profit at 8.7 percent of the cost of all work done, including the cost of materials, equipment, and appliances delivered and the work done by the contractor, and the Department will reimburse the contractor for the cost of such work, as determined by the Compensation Board, to have been incurred by the contractor, including the cost of the expense of the final settlement of the liability of the contractor, and the cost of the expense of the final settlement of the liability of the contractor, and the cost of the expense of the final settlement of the liability of the contractor.

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